

JOHN POWELL,)
)
 Petitioner/Appellant,)
)
 VS.)
)
 TENNESSEE BOARD OF PAROLES,)
 CHARLES TRAUGHBER, Chairman;)
 TOM BIGGS, DON CHASE, ROSE HILL,)
 JOHN HARWELL, ANCEL McDUFFEE,)
 ED FRIENDS, Board Members; DEBBIE)
 MILLER, Executive Director; JENNIFER)
 JOHNS and TERESA THOMAS, Staff)
 Attorneys; JOHN McGRANAHAN,)
 Institutional Parole Officer,)
 Respondents/Appellees.)

Davidson Chancery
 No. 95-962-I

Appeal No.
 01-A-01-9510-CH-00481

<p>FILED</p> <p>May 17, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

IN THE COURT OF APPEALS OF TENNESSEE
 MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT OF DAVIDSON COUNTY
 AT NASHVILLE, TENNESSEE

HONORABLE IRVIN H. KILCREASE, JR., CHANCELLOR

JOHN POWELL #84643
 Route #1, Turney Center
 Only, Tennessee 37140
 PETITIONER/APPELLANT/PRO SE

CHARLES W. BURSON
 Attorney General and Reporter

PATRICIA C. KUSSMANN
 Assistant Attorney General
 Civil Rights and Claims Division
 404 James Robertson Parkway
 Suite 2000
 Nashville, Tennessee 37243
 FOR RESPONDENTS/APPELLEES

MODIFIED, AFFIRMED AND REMANDED

HENRY F. TODD
 PRESIDING JUDGE, MIDDLE SECTION

CONCUR:
 SAMUEL L. LEWIS, JUDGE
 BEN H. CANTRELL, JUDGE

JOHN POWELL,)	
)	
Petitioner/Appellant,)	
)	Davidson Chancery
)	No. 95-962-I
VS.)	
)	
)	Appeal No.
TENNESSEE BOARD OF PAROLES,)	01-A-01-9510-CH-00481
CHARLES TRAUGHBER, Chairman;)	
TOM BIGGS, DON CHASE, ROSE HILL,)	
JOHN HARWELL, ANCEL McDUFFEE,)	
ED FRIENDS, Board Members; DEBBIE)	
MILLER, Executive Director; JENNIFER)	
JOHNS and TERESA THOMAS, Staff)	
Attorneys; JOHN McGRANAHAN,)	
Institutional Parole Officer,)	
)	
Respondents/Appellees.)	

OPINION

The captioned petitioner has appealed from a judgment sustaining respondents' motion to dismiss petitioner's suit wherein the complaint is captioned "Petition for Certiorari." The complaint does not allege any specific action of respondents which would be subject to judicial review. The prayers of the complaint are:

1. That this Honorable Court serve upon the defendants as the law requires, and require each defendant to file a responsive answer to each and every issue presented.
2. Plaintiff requests the Honorable Court to appoint an attorney to represent plaintiff pro bono, to ensure fairness of the proceedings, in light of the fact that the defendants will have a division of attorneys in which to represent them.
3. Declare that the defendants are extremely prejudiced in their application of rules and procedures, so much so, that a fair hearing is impossible to be had and such respondents are unfit to hold their offices on the Board because of their willful violations of fairness, due process and equal protection of the law, and the law of the land.
4. Make a finding of fact and conclusion of law on each and every issue presented, and find that the defendants have misused and abused their official positions by violating the constitutional rights of the plaintiff, through the use and misuse of rules and procedures that are illegal.
5. What other relief this court deems necessary.

The complaint appears to request a declaration and enforcement of plaintiff's rights to a hearing before the Parole Board. However, there is no allegation of any request for such a hearing, or refusal of such hearing by the Board. Until some action is taken by the Board, there is nothing to be reviewed by certiorari.

The substance of the complaint appears to be a request for declaratory judgment, but there is no allegation of a request for or grant or refusal of such a ruling by the Board. Absent such request and action thereon by the Board, there is no basis for a declaratory judgment by the Courts.

The Trial Court indulgently discussed the merits of petitioner's contentions; and, if such contentions were properly before the Courts, this Court would agree with the reasoning of the Trial Judge. The dismissal of the suit is affirmed.

This is a frivolous lawsuit and a frivolous appeal. Therefore, this Court respectfully disagrees with the waiver of costs by the Trial Court and taxes all costs against the petitioner.

The cause is remanded to the Trial Court for assessment and judgment for Trial Court costs and damages for frivolous suit and appeal.

Modified, Affirmed and Remanded.

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE